SPEECH

OF

ST. GEORGE TUCKER CAMPBELL, Esq.

IN SUMMING UP

FOR

THE CONTESTANTS

IN THE

CASE OF THE DISTRICT ATTORNEY.

PHILADELPHIA:

U. STATES STEAM-POWER BOOK AND JOB PRINTING OFFICE, LEDGER BUILDING.

1851.

CONTESTED ELECTION CASE.

Thursday, March 20th, 1851.

BEFORE JUDGES KING, CAMPBELL AND KELLEY.

SUMMING UP OF ST. GEORGE T. CAMPBELL,

FOR THE CONTESTANTS.

If your Honors please, I commence the argument of this case, to day, relieved from an embarrassment that weighed if not upon the Court, certainly upon myself, till within a few moments—the possibility that what I was about to say was to be useless, in consequence of the proposed step in the Supreme Court, I mean the application for a writ of *certiorari* to this Court. It gives me great pleasure to say, that the application made to that tribunal has within the past ten minutes been refused. We are thus disengaged from any embarrassment that can arise in the discussion of this case, from the supposition that a subsequent argument elsewhere may be required.

I would have preferred that the duty I am about to perform, should have been discharged by one of my colleagues; but they have thought that my intimate acquaintance with the facts in this case, arising from continual attendance at the hearing, might be of some service to this Court—and that, not in the

great questions, but in those minor details which may relieve your Honors from great labor, I may be of essential use to you, I shall obey the suggestion that fell from the Court yesterday, and in opening this argument, will try mainly to aid the Court in this regard. I cannot, with justice to myself, proceed to that duty, without expressing what I feel, and what every other honest minded man in this community feels, my gratitude to this Court for the public investigation of this case. Bad men are chiefly governed by the fear of punishment and detection, and now that it is announced from this Court and by this Court that such investigations will take place, and that your Honors will resolutely and sternly examine these questions, rely upon it the liability of the recurrence of these frauds is greatly diminished. The theory of our government is founded on the faith which we all have in its elementary administration. All depends upon the popular vote being the truthful representation of the popular will. I believe, that all we have of good depends upon this—that the honor, and the strength, and the happiness of our country, depend upon our being able to obtain shortly and certainly this truthful representation of the popular will—all the evils to which we are subject and the blessings we enjoy or claim to enjoy are derivable from that source. The limit of the direct expression of the popular will is becoming day by day more extended; and the direct influence of the decisions of the people are to affect, not simply as they heretofore have done, a few leading portions of our government—and the history of the past shows that such is the tendency of the future, and the direct appeal to the popular will is to be carried hereafter to an almost unlimited extent. It becomes therefore doubly important that these peaceful revolutions of ours, which it is our pride every year to look at, and which it is the

astonishment of all other countries to behold, that these peaceful revolutions should be so conducted as to command the *faith of the people.* It has been a question which I am not disposed to discuss, how best this truthful expression of popular will is to be obtained. Opinions abroad and at home differ on that subject. Some suppose that the vote by ballot is the true mode to obtain that truthful expression, and others think the only way is that it shall be done openly and boldly and by word of mouth. In some of the States of our Union, in the State of Virginia for instance, it would be considered beneath the dignity of a freeman to conceal his vote. How far such a system is preferable to that of Pennsylvania, or how far practicable, it is not for me to discuss. From the earliest time, or at least ever since its form has been republican, the vote by ballot has been the vote maintained by the people of Pennsylvania.

I cannot look at the disclosures which have taken place in the course of this case, and at the effect of them, without regarding this, as in fact a trial before the Court of our chosen system. We are here trying whether this constitutional provision of ours can be maintained—we are trying that in which must rest the power of our government—whether there does exist in one branch of it, the judiciary, the power to purify the rest, and without which, its death is positively certain. If there does not exist in this form of government a power of self-purification somewhere—if these ballot boxes, which are the fountains whence flow all the good, the blessings and the happiness we enjoy, may be poisoned, and there can be found no antidote to stay the course of that poison, and no power to punish the criminal, then the body politic must soon rot and die. The faith of men begins to be shaken—they begin to say the one to the other, it is useless for us to go to the ballot box—it is

useless for me, the individual man, to place my vote there, fraud depriving it of its effect. It is the duty of your Honors, and it is within your power here to do that, which it has seldom been in the power of any Judges to do, to re-assure the community in the faith which they ought to bear to the institutions under which they live—to make them love,—and without they have confidence in, they cannot love—those institutions. I say that all that your Honor, who has been a quarter of a century on the Bench, has done is as nothing compared to what you can do now for the public good, and for your whole country. If the time shall come when these ballot boxes shall be opened, and fraud unpunished and uncondemned shall fly forth from them, even hope will not remain behind. I crave your Honors therefore to bear with me, while I proceed to drag you through the painful and tiresome details of this case. The patience with which the Court has already listened, is some token that they will give that minute attention required to the facts of the case, and I propose deliberately, carefully and methodically to investigate each and all of them.

I begin by calling your attention to the fact, that on the 3d of May, 1850, in furtherance of this general progress of things in our country, for the first time was it decreed by our people that an election should be held for a semi-judicial office—that of District Attorney. The law, to which it is unnecessary for me, for the present, to refer, provides, that upon the election of that officer, any contests in reference to his election shall take place in the same manner as is provided for county officers. The law relating to contested elections you will find at pp. 391 and 387 of Purdon's Digest, in act of 18th April, 1839. The Pennsylvania law of contested elections in legislative bodies, (to which this proceeding is assimilated,) although of recent date, originated

in what is called the Grenville act, passed in Parliament in or about 1768. The theory of that act was, that a large body of men were unfit to determine any question of this kind. It was truly said that in such contests as this, before Parliament, "few attended the hearing, but all attended the decision." Your Honors, if you feel the slightest anxiety to investigate the history of that act, which was introduced in Pennsylvania in 1791, will find it in one of two volumes of the debates of the House of Commons, known as the Cavendish debates. From 1768 to 1774 the doors of the House of Commons were closed against the public, and during that period no regular debates were published. A member of that body, Sir Henry Cavendish, who possessed the art of writing in short-hand, as then known, amused himself by reducing what was said to notes for private use. Many years after his death, in fact, not till within the last ten years, they were decyphered, and form two volumes of the debates of the House of Commons from 1768 to 1774. There you will find the motives which induced the British Parliament thus to regulate the decision of contested elections. This is the origin of our law, which provides that the decision of the committee of the legislature shall be final—differing from the rule of the national legislature, where contested elections are decided very much on the principle of few attending the hearings, but all being present at the decision. The law here provides, in the most minute manner, for the careful selection, by ballot, of the committee, and everything is done that can be done, to avoid the influence of partisan spirit. In this State, under these laws, so existing, an election took place on the 8th of October, 1850. Suffer me, in my detail of the facts of this case, to call attention to one or two figures in reference to the result of that election. I do it more in reply to what was suggested in the

opening of my learned brother on the other side. By the return for District Attorney, Mr. Reed received 19,555 votes, Mr. Kneass 19,640 votes, Peter A. Browne 240, and W. R. Dickerson 2633. I understood my learned brother in his opening to say that Mr. Kneass fell 700 behind his ticket. If you deduct, therefore, those 700 as men of Mr. Kneass's party who gave their votes to Mr. Dickerson, you have 2173 as men of Mr. Reed's party who gave their votes to Mr. Dickerson. If you add those 2173 to Mr. Reed's vote—if you add his erring friends to his true friends—you will find it amounts to 21,728 votes, and that the argument presented to this Court with reference to falling behind his ticket, arose from the fact that no allowance was made for the votes that Mr. Dickerson received. The successful candidate for County Commissioner had but 21,344; the Canal Commissioner had 21,305. You will find that the argument on the other side is mistaken in supposing that Mr. Reed fell in any degree behind his ticket. It is not so. The sole difference arose from the abstraction consequent upon the third candidate. Such is the general result of that election.

I propose, very briefly, to present to the Court a statement of the dates of the occurrences that immediately followed. On the 18th of October, 1850, the petition was filed, and the 9th of November was assigned for the hearing. On the 5th of November, notice was given by our learned friends on the other side, of two motions. First, a motion to quash the petition, and second, a motion to strike out certain clauses of it. On the 9th of November, the argument on the motion to quash came before the Court, and cotemporaneously with it, a motion was made by us to amend the petition. On the 4th of February, an opinion was given by this Court, deciding, first, that the petition was originally defective; second, that the amendment was allowable;

third, that certain of the specifications should be stricken out. Such was the decision of the majority of this Court.

On the 12th of February, this laborious investigation began, and I am now before the Court, to maintain that the return which gives this office to the respondent is a false return. I am here to maintain, and this is my proposition, that a majority of the votes of the citizens of the city and county of Philadelphia was given for this office to Mr. Reed. I am ready under the decision of this Court to prove this, in a certain specified mode. But I should not hesitate, if it were necessary, to contend that if I had once obtained a *status* in this Court, and in the course of the investigation other frauds appeared, your Honors would consider them, punish them, and do justice in reference to them. But it is not necessary for me to go so far, because the evidence I bave presented applies itself so accurately to the points to be decided, that it is not needful for me to ask you to widen one hair's breadth the decision announced by the Court.

It is proper first distinctly to understand the specifications which I am allowed by the permission of this Court to maintain. I am allowed to give evidence to maintain the second, which relates to the error in West Philadelphia, of fifty votes, and the error in Kensington of five votes. The error in West Philadelphia I have addressed testimony to, but to the error in Kensington I have given no evidence before this Court. I was allowed, second, to give evidence of the 15, 16, 17 and 19. These related to the First Ward, Moyamensing, and I desire to say to this Court, in reference to them, that after I had proceeded with my case upon the three other points, I thought enough had been presented, and I knew that with reference to the particular allegations in First Ward, Moyamensing, they would take more time for investigation than those we have already examined. But do

not let the learned counsel say that these things have been abandoned in any other spirit than becomes any professional man who follows the wise rule of letting well enough alone. I pass them with this remark, and I say that I am allowed, third, to prove my twenty-third specification, referable to Penn District. I am allowed, fourth, to prove my third, fourth, sixth, seventh, eleventh and twelfth, and these relate to Second Ward, Moyamensing. This classification into four parts will be found convenient for the Court, as I have found it to be in my own preparation of the case.

The fourth avers that 153 votes in Second Ward, Moyamensing, were actually deposited for Mr. Reed, while but 94 were actually returned. The seventh avers that tickets voted for Mr. Reed were removed, and others with the name of Mr. Kneass upon them were substituted. The eleventh refers to the altered condition of the tally papers. The third and the sixth remain to be considered, and to them, I respectfully for an instant call your attention. The third avers that in this ward 243 names and upwards were added to the list of voters; the sixth avers that 243 votes and upwards of persons, not qualified voters, were received. In other words, the third sets forth that no such votes were cast; the sixth sets forth a false personation of the individuals. I pray the Court to regard these two as in their nature alternative, and that they must from the necessity of the case be so alternative. Let me make myself clearly understood. I see, for instance, the name of *Violet Primrose*, or any other such name upon a list of voters deposited in the office of the Court of Common Pleas, and I know that that man did not vote; I have then but one of two alternatives to present to this Court—either that this man's name was added after the polls were closed, or, second, that he was personated while the polls were

open. I hope, therefore, that the Court will understand these two specifications as carefully drawn for that result. False personation has not been opened by our friends on the other side—false personation has not been pretended by them. My case, however, is mainly upon the third specification—my case is, that the officers of this election were bold and bad men—my case is, that these 300 names were fraudulently added after ten o'clock at night. The alternative, the learned counsel if they desire to screen the officers may, if they please, take—the result to me is the same. I am either, therefore, under my theory of the case, to be heard on my third specification, or if these officers were deceived in reference to these 300 citizens, and supposed they were receiving votes of those entitled to vote, then it was a case of false personation, and the 300 votes fall as well, and the result to my case is precisely the same.

I have thus stated to the Court the points under which I am authorized to give evidence, and I proceed now to the consideration of that which has been presented. The general return gives Mr. Kneass a majority of 85. I allege this to be false, and first, I propose to show that it is so by mere arithmetic, without any question of fraud; and to make my views in this regard intelligible to the Court, I have prepared a statement expressive of my understanding of the arithmetic of this case.

Mr. Kneass's majority as returned,			85
Alleged mistake, Fourth Ward, Spring Garden,			3
" " Third Ward, Northern Liberties,			10
" " Fourth Ward, Kensington,			7
			105
Second Ward, Moyamensing, Kneass's return,	1097		
Count,	1091—6		
Reed's return,	94		
Count,	98—4		10

Brought over,			10
W. B. Reed, First Ward, West Philadelphia,			50
Penn Township, Kneass's return,	407		
Count,	377—30		
Reed's return,	26		
Count,	53—27		57
			117
			105
Reed's majority,			12

Mr. Kneass's majority is returned as 85; the alleged mistake in Fourth Ward, Spring Garden, is 3; in Third Ward, Northern Liberties, 10; in Fourth Ward, Kensington, 7—making 105. I do not pause to consider the character of the crosses of one of the tens. I suppose that this, under the evidence, is past all controversy. I do not pause to consider the erasures in Fourth Ward, Kensington. As to the Second Ward, Northern Liberties, no evidence has been given in regard to it. I have, therefore, given to the Court these figures which I understand express the numercial calculations which have been introduced here. Now, I turn to my side of this account; first, West Philadelphia. I refer to page 48, to Mr. Enue's testimony on that subject. I hold this to be beyond controversy—it is not my duty to suppose that contest in this regard is possible. That gentleman distinctly stated that such was the fact, and, therefore, it is unnecessary for me to waste time in referring to it. The second error to which I wish to call attention, is that which resulted from counting these boxes. In Second Ward, Moyamensing, by the returns, Mr. Kneass received 1097 votes—by the count, 1091—difference, 6. Mr. Reed, by the return, is allowed 94—by the count, 98—difference, 4. The two together make an aggregate in Second Ward, Moyamensing, of ten. In Penn Township, by the return, Mr. Kneass has 407 votes—by the

count, 377—difference, 30. Mr. Reed, by the return, 26—by the count, 53—difference, 27; together, making 57 votes—the aggregate, 117. So that, by the mere exhibition of these figures themselves, there does exist a majority for Mr. Reed of 12 votes, which passes and leaves untouched all questions of fraud—I say no more in reference to this—it is my duty simply to lay these facts before the Court.

I come now to consider the second point to which I shall claim your attention. I shall consider my third and sixth specifications, which relate to Second Ward, Moyamensing, or rather the third, for upon the third my case depends. My case is that 316 names were added to the list of voters—I say that many—I do not say there were not others. I shall point to your Honors, when I come to examine, by and by, the manner in which this list is made out, places where I believe others are to be found—but I begin there because I find at 907 the name of Alexander Gillis, who died in June, '49. I therefore commence there, feeling safe in at least stating to this Court that the last 316 were added. I propose to prove that these votes were added in four distinct ways—first, by *time*, second, *by the testimony of persons named on that list after* 906; third, by, I may say, *the political history of this ward*—by its previous votes and previous numbers, and fourth, I propose to prove *this fact by the total absence*, on the part of the respondent, of that evidence which the nature and character of the case called upon him to produce, and which, if my allegation was not truthful, it was in his power in a thousand ways to contradict.

I first call your attention to this matter of time. We have one paper by which time is to be decided—we have one list of voters left of the Second Ward, Moyamensing, and but one. That paper is a copy, or part of a copy, but in the

main, by common confession of all parties, this list of voters should truthfully express the order in which the votes were given. If there are trifling inaccuracies—if there are trifling discrepancies upon the question of time—I crave your Honors to bear in mind that they are not irreconcilable, having reference to the manner in which this paper was kept; but I shall present to you, systematically, a body of evidence, in the main conclusive, upon what has not yet been denied—that this list generally represents the order in which men voted. We are now testing time, and we are to test it by the only record left for us. There will of necessity be found on every question of time like this, some trifling difference of memory between witnesses, but I propose to give a consistent body of evidence, in the number and character of witnesses, and in the circumstances to which they refer, which is overwhelming, to the effect that but 900 had been reached on that list of voters at ten o'clock at night, and this is the proposition that I propose now to prove. I have prepared for the convenience of this Court a time table, on which the voters who have spoken as to time are divided into four classes—first, those who voted from eight o'clock till ten, A. M., and you will find that they run consistently from 5 to 83. The next is from ten to three, and your Honors will find that that list begins at No. 50, and goes regularly on to 421. The next is from three to eight, P. M., and I propose to call your attention to one or two of these, to show the accuracy with which the whole body of the evidence is before the Court. B. Shain voted at two o'clock; J. D. George, 393, at 3, P. M.; J. C. Montgomery, 602, at 5 o'clock; William Landon, 878, at 20 minutes to 10, P. M.; and when you add to this the testimony of Donald, (p. 229,) you will have a list of men whose character, interest and

feelings are separate, different and distinct. I submit that I have presented to the Court, on this subject, the testimony of thirty or forty respectable fellow-citizens of yours and mine, who have consistently detailed to us the hours at which they respectively voted; if any two, or any ten, or any twenty are true, then my proposition is maintained, to wit: that No. 900 was at the utmost the limit reached when the polls closed at ten o'clock, and this goes further to show what is indeed not disputed, that this list represents the order of the voters as given on that occasion. Now, if that stood by itself, and the testimony of these witnesses is uncontradicted, no judicial or layman's mind can come to any but one conclusion in reference to it. But there are said to be three inconsistencies. With this time table before you, and the printed list of voters which I now hand to your Honors, I propose to examine the inconsistencies which are alleged in this theory of time. They are three—first, two young men, named Pass and Breeson, whose votes were numbered 886 and 887, (p. 96,) and who testified that they voted in the neighborhood of eight o'clock. I say that this is a mistake, and I propose to call your attention to the easy capacity of our learned friends to strengthen it, if it were not. They have put it upon the testimony of two young lads, on an election night. Now, I propose to show, that if this had been correct, there was in the hands and under the control of our friends the conclusive means for proving it. Turn to the close of page 96, to the question put to James Breeson on cross-examination there:

"*Question.*—Do you know Michael Breeson?

"*Answer.*—I know him. I don't know at what time he voted. He is an uncle of mine, I believe. He lives in Milton street, between Tenth and Eleventh."

Look at 901 on the list of voters, and there you will find the name of Michael Breeson. His name was designated, his connection with the young man is pointed out, and one of two conclusions I have a right to draw from the skill and capacity of those with whom I am opposed. Either he didn't vote at all, or, if he did, his account of the time was different from these two lads, frolicking upon an election night. There is another thing I wish to call your attention to: Breeson says in his testimony, "I saw William H. Fagan and several more." Now Mr. Fagan has been here upon this stand, upon a question as vital as this question of time to our friends on the other side. Was he asked with reference to these young men? Never. I pass now to the other allegation of mistake. Mr. Kelley, No. 144, testified that he voted about one o'clock; he is one of our witnesses. Mr. Benjamin Tomlinson, No. 571, stated that he voted about one o'clock. I propose to show that the error of Tomlinson is one of those accidental errors that any man might make. I will call attention for that purpose to the testimony of those who were in the neighborhood of Kelley, but who correspond with him, and the testimony of those in the neighborhood of Tomlinson, who differ from him, to show that this is an accidental error which any man might fall into. At No. 154, William Smith, p. 21 of the testimony; 158, John Skill, p. 27; 178, Charles Darnell, p. 24; 187, J. M. Thomas, p. 30:—these all are in the neighborhood of 144, and correspond with the testimony of Mr. Kelley as to one o'clock. Now I turn to those in the neighborhood of Mr. Tomlinson; 569, J. H. Hutt, p. 28; 584, Hassen, p. 10; 602, Montgomery, p. 2, all refer to a later hour. Thus I show that it was an accidental error in Tomlinson in fixing a point of time. The third and last is Moses Henry, which is the only inconsjstency than remains; his

testimony is in p. 97. I must ask one of your Honors to take the original list of votes in your hands. There are three names that have from time to time been supposed to represent Moses Henry. One is at 783—that I don't regard as his name—804 is the next one I call your attention to—the third is 972, to which our friends attempted to attach this man's name—at 804 you will observe his first name is correct—our friends seek to throw us into inconsistencies by attaching it to 972—that is the name of *Morris* Henry. I say this man voted at 804, where his first name alone is correctly put; and that that truthfully expresses his vote. Suffer me to turn you to his testimony at p. 97. "I voted as near 9 o'clock as I can recollect." If he voted at 972 at nine o'clock, deduct 972 from 1223 and there are 251 votes to be deposited between 9 and 10 o'clock. That exceeds the Moyamensing scale even, and they were vouched voters, for the last 211 do not rejoice in the feeble honor of being on the assessment list. There is another thing—he says that Edward Develin went with him, and your Honors will find that man at No. 800, and at 804 is the first name of this man correct. See how by this you confirm Mr. Landon, who is No. 878 at twenty minutes before ten; take 804 at nine, and you make him consistent with the whole body of the testimony. I have thus gone through with these alleged inconsistencies.

I have handed to the Court my table of time, and I conceive that Moses Henry is one of the strongest witnesses to support Mr. Landon. To take time in another aspect—when did these polls open? Taking them to have opened at 8 o'clock, from 8 A. M. to 10 in the evening is 14 hours, or 840 minutes; or take it at 9, according to my friends' admission, and there were only 780 minutes; 1223 votes are said to have been received in that 780 minutes;—600 men were vouched for and sworn, and

produced testimony or were known to the officers. It cannot be. Look at it, and bear it in mind when I shall turn attention to these statistics of Moyamensing. We know that of the last 300 there was nobody known to the officers, and therefore at least 300 men had to be sworn before they could be admitted. Take this calculation of time and bear in mind the body of respectable men who sustain it, and there can be drawn but one conclusion from it—that at about 900 the clock tolled ten.

Now I come to the *second* branch of what I propose to prove —those persons after 900 on the list of voters who proved that they did not vote. Recollect, that though I separate these things one from the other for convenience of discussion, yet that they are really tied together—see how the time is strengthened by the fact that I am capable of producing before this Court man after man, after 900, who did not vote. The law, that the citizen may detect fraud, puts at his command, first, the assessment list; second, as soon as the election is over, the list of voters deposited among the public records of the county, and open to the inspection and examination of every man caring to look at it. When I go, after an election, to look upon the list of voters, and I find a name there, and I find the same name upon the assessment list, the first presumption is that the man assessed is the man who voted, and I go then to the citizen named, and ask him, first, "I find your name on the list of voters, what time did you vote?" to see if it is there in its order; second, "Did you vote at all?" and when I find he did not, I have what the law intended I should have. What more conclusive evidence is it in the power of man to give of fraud, than his contradiction in this of the list of voters? The law intended I should have, but I have it not here—a third

thing—an assessor's book, with his letter *v.* opposite the names of all who voted, so that I could identify the person with the voter. I have not that. I take the liberty of handing to the Court a list of the names of those who did not vote, with the pages of their testimony, for convenient reference. When the list of voters in the Prothonotary's office was examined, after the election, the name of *Violet Primrose* was seen. The interpolation of such a name as this was a great mistake—it was worse than a crime—it was a blunder. That man was out of the city, and a telegraph *within the ten days* told us that he had not voted; further inquiry was stimulated, and, made alive to examination, we traced out remarkable names, such as *Garret Ruth, Edward Virtue, the Rev. Mr. Trapier*, and our attention being once directed by the marked names, we did what the law intended we should do—we looked at once for the men. I crave your attention to this list. Of the 39 on the first page, there are but 11 not on the assessor's list, so that 28 are located, and we call the men here before the Court. Let us see who they are. William Taylor, Sr., and William Taylor, Jr.; they had moved out of Moyamensing long before, and gone to Southwark. Look at William Kernan, Sr. and Jr. Look at Charles Moss, and turn, when you look at that name, to Ringland's testimony. He looks at the list, finds Charles Moss, and tells us he is in Court, and to be found and to be produced, and we wait and he is not produced, and *we* produce him, and he turns out to be *a man who never voted in America*. When you come to consider this list, I pray you to divide in your minds those we produced in the outset and those we were enabled to produce by the identification offered by our friends on the other side. Look at the *Rev. Mr. Trapier*, *Frederick*

Offerman, Timothy S. Arthur, George Manley, Wesley Mann—a name well kown and a man well known—these men swear they did not deposit a vote in the ballot boxes. *Benjamin Paullin* was the deaf and dumb man. When he went to vote, how did he vote? How did he communicate his name, his ballot, and his residence to the officers of the election? If his vote had been recollected by that peculiarity, it would have been a striking circumstance. But, no, sir. His name is here, but did he vote?—did any one of these men vote? Eight more stood at your Honors' bar, and they were objected to and rejected, because not under the rigid rule of rebutting evidence. It is useless for me to go over this thing—it is a sort of testimony that speaks more than counsel can utter. Tell me how they came there—explain how it was that you have taken 28 assessed men, and every one of them repudiates his name! Now, having called your attention to this, I simply solicit you to connect it in your minds with my first point, as to time; and I pause for a moment to examine the construction—the mechanical construction—of this window list. I am first struck, in studying it, with the wonderful duplication of men's names; 918 and 902, two *John Duffys;* 923 and 1011, two *P. McEavers;* 934 and 353, two *Thomas McCloskeys;* 955 and 140, two *Michael Lambs*—I shall say a word about him presently—996 and 684, two *Daniel Downings;* 1013 and 34, two *John Murrays;* 1050 and 133, two *William Keysers;* 1071 and 161, two *James Dayleys;* 1128 and 219, two *Thomas Pattons;* 1216 and 196, two *George Browns.* But there is another peculiarity that I desire to call your attention to. It is their being taken so peculiarly from the assessment list. If you will look on that list of voters at 923, 924, 925, 926, I will read from the as-

sessment list which I hold in my hand—*P. McCeaver, Samuel McGowan, Andrew McQuillan* and *Patrick McCann.* They every one of them live in different places, yet they all vote, one immediately after the other. Among the many things a man receives in the course of a case like this, it was my pleasure to receive a nameless communication from a gentleman, evidently skilled in mathematics, to show that the chances of such a thing, honestly, are one in I will not undertake to say how many hundred thousand. You find here four names, and I find precisely the same names, in the same order, on the assessment list. One of these men we have called—Samuel McGowan—who swears he did not vote. Now we have, first, the duplication of names; second, names taken from the assessment list, in their order, and third, the number of people not assessed, who voted. Of the last 211, not a man is assessed. I find among the last names some are assessed, but the same names have been once before on the list, and the same man is not assessed twice by the same name. The same peculiarity, save one, is discernible in McMullen's, marked *thirty;* from 214 to 235, they are not assessed, except one. It is proved to this Court, that between 208 and 235, there is a clump of names written by McMullen, and but one is assessed, and not one can now be found. But there is another strange peculiarity connected with this list. . From 904, which is about the time I allege voting ceased, there is not a man votes in reference to the constitution of his country. Votes for the Amendment were scarce, very scarce; but whether scarce or not, it is a circumstance that cannot fail to strike the attention of this Court. That was a subject about which, if evil things were doing, men thought but little; it was a subject in reference to which there were no personal or political predi-

lections to gratify; but in reference to which there exists this most extraordinary and unexplained circumstance, that one-fourth, nearly, of all these voters, in one solid lump, not one man has deposited a vote for the Amendment to the Constitution. If you will trace McMullen's, 30, you will find just such another clump; not a man of them voted on the Amendment. Suffer me to say, that actually there are on that list of voters 566 men who are marked as having voted for the Amendment, while the return shows only 449—117 votes having disappeared. Thirty-nine voters swore they did not vote, and nine more are proved to have left this ward. I ask you, how did their names come upon the list of voters? Give me a theory—give me a reason—an explanation. False personation will do no good to the case, though it may to the officers; but, honestly, how did these names get there?

I turn, then, from that second branch of the question I have discussed to the third. I want to give a page of the political history of Moyamensing—not its bloody but its peaceful history. Every man in the city of Philadelphia knows, that, for some cause or other, that place has been a disgrace to our Commonwealth and to our country; that lawless violence and murder have run riot there; that honest men paused before they ventured out of their houses, in this the 19th century; that Insurance Companies hesitated before they would insure property, and it depreciated, and men left it. I turn to a few peaceful statistics of Moyamensing, as part of the political history of my country. The assessment list in Second Ward, Moyamensing, in 1849, was 1335; in 1850, it got up to 1544; the increase is 95 on the original, and 114 on the extra assessment.

I now crave your attention to the increase of votes in Second Ward, Moyamensing.

1848—Governor's election, aggregate, - - - -	774
" Presidential, " " - - - -	855
1849—Sheriff's, " " - - - -	722
1850—Dist. Attorney, " " - - - -	1223
In one year, from 1849 to 1850, the increase of assessments is,	209
" " " " " the increase of voters is,	501

Let any politician, who has the great experience of our learned friends, point to a similar case if it can be found, of the wonderful augmentation of suffrage. The increase in one year, in the Fifth Ward, Moyamensing, was 27; in Fourth Ward, 38; in Third Ward, there was a decrease of 27; in First Ward, an increase of 158, and in Second Ward, an increase of 488! Compare this table with what I have already called to your attention, and see if it be not consistent throughout.

I now come to the fourth point: which is the total absence of evidence on the part of the respondent, which the nature of the case called upon him to produce, and which, if our case was not truthful, it was in his power to present. Of any case I have ever known presented to a Court of Justice, this was the easiest of destruction—it was the easiest of absolute pulverization. We went upon a principle which, if it had not been true, left 450, I think I may say that many—individuals who could have contradicted it. I charged that the last 315 names on this list of voters were put there after the polls closed; the last 211 were, under the testimony given to this Court by the officers of the election, either known to them or vouched for. Forty-eight, I have presented to this Court out of that 315, and I call upon the counsel on the other side to produce me one. If this was not truthful, how easy was it of detection? If one decent, well

known, honest, respectable citizen, between 906 and 1223, could have stood here in this Court, and be sworn that he voted, there might have been something to contend about; they have not produced one solitary man. There was the list of voters. On the 18th of October my petition was filed—five months and better have passed—find me a man among them who will have the audacity to stand here and pledge his oath that he voted on the 8th of October last. There have been two attempts to do this; one I have disposed of in considering the question of time—I mean Moses Henry, and I have shown he was No. 804; I now come to the other attempt. I am sure my learned brother in reference to that man was deceived himself; I know that from the way he has managed this and all other cases, he would not knowingly deceive this Court. George Gurrel was produced, and you were told that his name was at No. 1066, (*George Girl,*) and that was the hope of our learned friends. Turn to his testimony at p. 176. The witness, says Mr. Hirst, is No. 1066; he says "I voted at the last general election a little after 9 o'clock"—mark that one thing; "the only one I saw there, I knew, was Mr. O'Neill"—mark that another thing. When I came to cross-examine him, I asked him how he pronounced his name, and he said Gurrel; look at 700 and there is George Gurrel. But that is not all; Hugh O'Neill was beside him; look at 691, there is Hugh O'Neill, who is called upon the stand by our learned friends, and he says, "I saw Gurrel on the ground," and our friends did not ask him if he voted at the same time. I call your attention first to the time, nine o'clock, at No. 700; second, to Hugh O'Neil, who is 691; and third, that the man's name stands there, written as he would pronounce it—for these clerks took down, not their pronunciation but his own. These are the only two men pretended

to be before the Court,—Moses Henry and George Gurrel. Where are the rest of them? Where are they? Why, sir! three hundred Lacedæmonians went to Thermopylæ, and even from that bloody fight, our boyish classics tell us, that *one* wounded soldier staggered home; and I think we are told there besides, that his people, outraged that he had not poured out all his heart's blood where his brethren died, rose up and slew him. *These* three hundred Spartans have taken warning by the fate of that returned soldier, and they have died to a man upon the field. Died!—if your Honors please, I beg pardon, they did not die, because death will leave the body still—they became etherial—no mortal man can see them—no man can touch them—no man can find them. I thought at one time, in the smoke of this combat, that I saw one soldier coming this way, and he rejoiced in the peaceful name of Michael Lamb, and goes here by the number of 955. If your Honors please, he was led by the Knight of the Lantern, Mr. Dennis Loughlin, into the tent of the learned leader of our opponents, (Mr. Hirst,) and even his leechery could not bring him out alive—for he never came here. I call attention to this as a speaking fact. I refer to the testimony of Loughlin, who said Michael Lamb was at Mr. Hirst's office. He was there; he is not here, and I have a right to draw those conclusions which every just minded man would draw, that if he could have been here safely he would. At 955, is the same name as 140, and I am inclined to think that if Michael Lamb had come here, it would have been early in the morning that he voted—inconsistent with 955. He is not here. I called attention a little while ago to Michael Breeson, pointed out by his nephew, at 901. His home, his place of residence is known, but he is not here. These two men exist—they are not

here. Bear in mind, that any one man could have destroyed our case if it was not honest. Do not let me press too hard on our friends for the non-production of these witnesses in Court, till I call attention to the circumstances of the case. On the 18th of October, I spread upon the record the very names of the men whom I charged with having been fraudulently and falsely added to the list. For five months has that paper been in their possession; for five months have they had an opportunity to look for, to find, and produce some of these patriots—there is no one here. They have had, beside that, the list of voters open to them all that time; they have had, in the course of this investigation, sitting at their side, an advantage that we cannot possess—they have had the Assessor beside them—the very man who of all men should know every spot, and place, and house, within his peculiar jurisdiction. He is the very man to be able to designate and to produce, if they exist, any one of these missing heroes. To that same Assessor, in the face of this Court, was handed the list of the last three hundred, with a direction from the Court that he should examine it, and mark every name he knew; but the information we hoped to have from it followed the voters—it was never seen or heard of afterwards. Mr. McFall dare not open his lips on this perilous subject. We have one thing, however, and that is the assessment book of 1851, to which I am going to call your attention. I mean the assessment made in 1850, for 1851, immediately after this election, by the same John McFall himself, returned to the County Commissioners' Office for taxation purposes—proved by him, and given in evidence by me. Now, bear in mind, we have produced all the men whom we could find, and we look to our learned friends to produce some others, and we are driven to this assessment book to see if John McFall knows where any of

these men live. Let us see who they are, and where they live: At p. 51, of the Assessment Book, is *John Duffy;* p. 20, *Samuel McGowan;* he was before the Court—he did not vote; p. 447, is *Felix Bradley*—he did not vote; p. 292, is *Edward Virtue*—he did not vote; p. 144, *John Winters*—he did not vote. *John Robbins,* at 398, did not vote. *Charles Phillips,* 215; 186, *Benjamin Paullin,* the deaf and dumb man; *Violet Primrose,* 402; *Edward McCue,* 446; every one of these men has been here before the Court, and sworn they did not vote. At 430, is *Johnson Hemphill;* 458, is *James Wylie;* 262, *Richard Harred;* 287, *Timothy S. Arthur.* You will perceive that those to whom I have called your attention are those whom I have produced, and whom Mr. McFall has there written down, with their places of abode. They are on the list of voters after 906. I now turn to the other branch, and desire to give the names of persons after 908, who are on that assessment list, but have not been before the Court. *Charles McColgan,* 912; *Michael Lamb,* 955; *James Potter,* 962. I refer your Honors to twenty-two men besides, who were after 900 on that list of voters, whose names are in that Assessment Book of 1851. There are then two classes: first, those I have produced who were assessed by McFall; second, those whom he has assessed, whom he must have known—whom he could have produced. There is not one of them before this Court.

Now we come to another thing that our learned friends have had; they have had every one of these officers of the election, fast friends by that which binds men close together—their own consciousness of peril. Let me turn to McMullen's testimony, at p. 128. Just think of that man's condition before this Court, and tell me, when he told your Honors such a tale as this, if he was not conscious in his soul that it was useless to search.

"*Question.*—Have you since the election seen the list of voters after 907?

"*Answer.*—Yes, sir. I saw a copy of them about two or three weeks ago.

"*Question.*—Have you made exertion to find any of these gentlemen?

"*Answer.*—I saw on the list a man's residence that I knew, and I went to see if I could see him. His name was on this list, and I took the Assessor's list, and looked on it, and found out where he lived, and went to see him.

"*Question.*—How many others did you look for?

"*Answer.*—For some few more, but I didn't pay attention to them, only hunting them. I took the list in my hands, and looked at it, to see if I knew any of the names on it, and then I took the Assessor's list and compared them. I saw a great many on that list that were on the Assessor's list. I went to one man, and tried to see him, but he was not at home.

"*Question.*—Did you go to any other man?

"*Answer.*—I think I did. I didn't go to more than three out of the whole of them.

"*Question.*—Will you favor me with those three names?

"*Answer.*—That I don't remember. I can tell you where they live, but I don't remember their names.

"*Question.*—Where do they live?

"*Answer.*—In Milton street, between Tenth and Eleventh; the three lived there. I cannot give the name of any of the three.

"*Question.*—Did you look any further than for three?

"*Answer.*—Yes, sir; I looked over the list.

"*Question.*—Did you look through the ward?

"*Answer.*—These are the only three I went and looked for. I went to look for them about ten days or two weeks ago.

"*Question*—You knew their names when you went to look for them?

"*Answer.*—I had them on a piece of paper. I took it off the list myself.

"*Question.*—Did you see any one of them?

"*Answer.*—No, sir, not one. They told me they had moved out of the ward since the election. The man at the house where they lived. I don't know the man's name. I don't remember in what part of the list I found those three names."

My case is no half-way case. It goes upon no doubtful principle. It goes upon the ground that they, the officers, have committed fraud. Not one man could they find, and these are not all the men that searched. Dubassee made a search, (page 64.)

He knew two George Browns; George Brown is not here, and I suppose it is not doing injustice to Dubassee to say that if George Brown would have testified he voted at night instead of at ten or eleven in the day, he would have had him here. I suppose the same spirit that led to writing eleven names in a minute, would have led to the production of one of these Spartans. Look also at the mode in which Mr. Murphy made his search.

"*Mr. Campbell.*—Give the name of any one that you saw vote between twenty minutes before ten and ten o'eloek?

"*Witness.*—I eannot; for the erowd was so great that I eould not push up to see the voters. I eould uot name one man. I eannot give the name of any other man who voted about nine o'eloek. Henry Dugan voted between twelve and two o'eloek. I know him and saw him vote. I know two of that name—himself and his unele. I don't know of any other man of that name. One voted, but I am not aware that the other did.

"*Question.*—Did you seareh for some of the persons whose names were on this list, among the last 250 or 300?

"*Answer.*—I did; I found several."

"*Mr. Hirst.*—This is eertainly not eross-examination.

"Judge King.—He may inquire whether he was engaged in hunting up any of the persons whose names are at the termination of that list, but he eannot ask what he ascertained from them, for it would not be evidence on either side.

"*Witness.*—I went to look for some of the persons whose names are in the last 300 on the list of voters, on Saturday last. I went to several parts of the ward.

"*Question.*—Give me the plaees?

"*Mr. Hirst.*—I objeet to wasting time in this way.

"Judge King.—If he ean show where these parties ean be found, they can settle the question.

"*Witness.*—The parties we did find have been subpœnaed, and will be here—all that we found that were voters, have been subpœnaed here. We went to several houses, and the individuals had removed to New York, and other plaees.

"*Mr. Campbell.*—All that you saw and eonversed with were subpœnaed?

"*Witness.*—All that we saw that had voted at the eleetion. Those we

didn't see we could not subpœna. I did nothing but stand by while they were subpœnaed.

"*Mr. Campbell.*—Was every person whom you did stand by and converse with on this subject, subpœnaed?

"*Witness.*—Yes; all that voted at the election. We did n't see any that did not vote. All that we saw that had voted or said they had voted, we subpœnaed. We did n't find any who said they had n't voted whose names were on the list. Some had removed here and there.

"*Mr. Campbell.*—You went to a certain number of individuals, and every one you saw whose name was on your list there, you subpœnaed?

"*Witness.*—Every one who said they had voted.

"*Mr. Campbell.*—Then there were some others whom you did see that you did not subpœna?

"*Witness.*—No, sir. All we saw and who said they had voted, and whose names were on the list, I subpœnaed?

"Judge King.—Did you subpœna every person whom you found, whose name was on the list of voters?

"*Witness.*—Yes, sir.

"*Question.*—Did you subpœna every person on that list that you found?

"*Answer.*—Yes, sir—I tell you, that he said he had voted—some we could not find—we found none that were on that list, to say they didn't vote.

"*Mr. Campbell.*—Every person on your subpœna that you were able to find, you summoned, whether he said he voted or not?

"*Answer.*—No, sir—not whether he said he voted or not. We found none that said they did vote, but we subpœnaed them.

"*Mr. Campbell.*—Did you see a man named William Craig?

"*Answer.*—I don't recollect.

"*Mr. Campbell.*—Did you see a man named John Duffy?

"*Answer.*—I don't recollect.

"*Mr. Campbell.*—John Wood, in Hall, between Tenth and Eleventh streets?

"*Answer.*—I don't recollect seeing him.

"*Mr. Campbell.*—James Neillis?

"*Answer.*—No. I was not out in his part of the Ward.

"*Question.*—Wm. Keyser?

"*Answer.*—No, sir; nor Patrick Bryan, nor Edward Hunter. I saw Andrew McQuillan; the other man subpœnaed him. I don't recollect seeing John Robbins, nor James Lansdoune, nor John Stone, nor William Morgan, nor Moses Lipman, nor Charles Moss, nor Wm. Green, nor Robt. Jones, nor John Ralston, nor John Dunn, nor Edward McClue, nor James Potter."

He found three or four—where are any of them? not one is here. He has been to find them, and he comes back more eminently dark than before; for no man is produced. I call attention to the long time our friends have had with the names before them, and they have the officers of the election and active busy friends, and I ask why it is that no man is before this Court? How did those names came upon that list of voters? They say "we cannot produce any, but we have heard of several." I think we have heard of five, and all of them are *congressmen*, emphatically. A man named Vertine they speak of. Where is Vertine—where is he to be found? Absolute darkness. Jacob Mayland is the second gentleman. I don't care whether he was the oysterman who died on the wharf or not. Wurteim said such a man drove an oyster wagon for Charles Clare. I sent to Clare's, and he said no such a man worked for him. Then there is a man named William Bradford, who is heard but not seen—nobody saw him. Look at pages 75 and 8, and you will find they heard a man named William Bradford vote, but nobody saw his face. The last of these men is one rejoicing in the name of Samuel Mullegrew, No. 1222. This is a witching time in the case, our friends ought to be very right here. But what a blunder it was to bring two men to prove he voted. Turn to McMullen's testimony (p. 121), it seems Mullegrew was a weaver, and at the time of the election lived in Seventh street, between Shippen and Fitzwater. Then turn to 193, to Mooney's account, and tell which is to be 1222. One says he lived in Seventh, between Shippen and Fitzwater streets, and was a weaver, and the other in Bedford, below Eighth, and was a tailor. Well, the same man cannot well live in two places at once—which of these two men is the man? *Lea Bunker*, seen, but not here, is the last of these invisible spirits. Why is there not some one decent man named?

Why is not a traceable man named, who has a home, a *status* in the community. Why is there not a man that has a family, a relative, a place in which he can be found? Why is there not some account given of one respectable citizen who is not a "congressman?" Bear in mind that these men are not on the assessment list of 1850 or '51—not a man whose home can be traced out. But there are three hundred men, their names and homes said to be known, and not one do you hear of, but you hear of men who walk the water and leave no trace of their footsteps.

I now refer to the absence of that testimony which the nature of the case required our friends to produce. How my case ought to be met, how it could be met, every lawyer knows, and no man better than my learned brothers here. They prove there was a crowd at the polls. Well, I care not whether there was a crowd at the polls or not. I want one of the men that made the crowd. They produce Dubassee to prove that eleven names could be written in a minute. Then they produce Coughlin, to prove that old Mr. Gillis said he didn't mean to vote; and they produce Waun, who swore that though he had not seen a man for eighteen years, yet when he did, he was incapable of recollecting five minutes. They produce Coughlin, to prove about Barton, and he didn't recollect his first name. They produce Fagan, who is sworn to have vouched for some of these men, but they did not ask him for whom he vouched. With the exception of the officers of the election, the whole of this case lies in generals, without one particular individual thing to maintain it. Up to this point of the case, we have no explanation of my question—"How came these three hundred names there?" The residue of this case, so far as the defendant is concerned, rests upon the officers of this election, and I desire to submit one or two views to the Court in reference to them. If my case is true, they are not trust-

worthy men. If my case is true, they were made guardians of the public but to deceive it. As your Honor said, in your charge to the Grand Jury, sometime ago, the man who tampers with the ballot boxes of his country, commits a crime second only to murder. It wants the boldness of overt treason—it is murder by poison—the meanest and most cowardly kind of murder. If my case is right, these men are on their trial, and their plea is "*Not guilty;*" and, by the privilege of the Court, they are allowed to testify in their own behalf.

Let us see, first, whether they are reliable men by their own confession. Have they done their duty? If your Honors please, they have, by confession, so neglected it, that if material for the purposes of my case here, I would stand boldly before the Court and ask your Honors to set aside the whole poll. There is a limit where the irregularities of officers must cease. There is a limit at which the right of the citizen to redress must begin. That was given in Boileau's case, and well stated. Although the return of these officers *prima facie* is true, yet if I do once successfully assail it, that presumption is gone. Let us examine these men by their own confession. What was their conduct? Why they began with a fraud upon the law. The policy and intent of that law is that men varying in their opinions should have the custody and control of these ballot boxes, and conduct the election. Yet this was perverted. Before these men began they took oaths, which oaths were as binding upon them then as those they have taken here at this bar. Let us see how they complied with them. What are the duties which they swear to perform? I will show your Honors seven of them,—the very seven that the law intended to give to the citizen as a protection from fraud—and I will show that not one of them they pretended to perform.

What is their first duty? I crave attention to the election law in Purdon, 378. What is their first duty? To see that men not on the assessment list shall be vouched for. This business of being known to the officers is unknown to the law of the land. Second, that if a man's name is not on the Assessment Book, his name and residence shall be entered on the Assessor's Book—that is the second thing these men swear to do. Third, they swear that if his name was on the assessment list, it should be marked with a *v*, when he voted. Fourth, that two cotemporaneous lists of voters should be faithfully kept. Fifth, to count truly and to count quickly. Sixth, to publicly announce the result—the number of votes that had been so taken; and seventh, carefully to preserve the papers; each one of these things is made a protection to the citizen against fraud, and each one of these they were sworn to perform. Did they faithfully execute them? Not one. If such conduct as this, by sworn officers, is to suffer them to stand before this Court in the light of disinterested witnesses, equal with their fellow man, there is no way to detect fraud. We have had but one of the seven gleams of light; if they had destroyed that last list of voters, there would have been no means of detection left at all. I ask you to bear in mind that these sworn officers have so disregarded their duty while I call attention to certain parts of their testimony. John McFall swears, as did Dubassee, that they wrote down these eleven names without any reference to, or connection with, this case; they swear to that which is positively incredible. They sit down, while this case is pending, and see how many names they can write in a minute, and without reference to this case. Can you believe it? But observe the change in the tone of the testimony as the case proceeds. Turn to the testimony of McFalls, at page 65, and see how the case begins. I think we

are indebted to this Court for this shifting of position. Your Honor asked a question which startled them a little, whether these votes were all taken without looking at the assessment list, and that was the first glimmer of light that made the whole current of this evidence change. When McFalls was first examined, time was all important then—the object that was to show that 1223 votes could be taken in a day. Look at page 65; he says "there were challenges on each side during the day, but there was little challenging done altogether. I never saw less done at an election than on that day. Challengers were present all the time on both sides; I could not tell how many; there were sometimes two—three—a dozen or a half dozen. No vote that was challenged was received without investigation, unless the inspectors knew the persons. Vouchers were produced in *several* cases, who swore they knew the party." It had not got to be important then to satisfy the Court that vouchers were produced in 211 cases certainly, and probably in 600 cases. The whole current of his testimony was to satisfy the Court how *fast* the thing was done—how little occasion there was for delay—that the votes came rolling in like boys' marbles. Now go a little further. On the 28th of February the Court adjourned. McFalls has time for reflection, and then the *several* vouchers that were there in the course of the day, magnify until they get into *hundreds*. I ask attention to page 79.

"All the requirements of law, so far as you knew, were complied with in reference to voters?

"*Witness.*—I don't understand you.

"When a man came who was not on either of the assessment lists, he was required to make due proof?

"*Answer.*—Yes, sir. This far, if a man came who was not known to have a residence in the ward, he either had a voucher, or the officers of the election knew him.

"I understand you to say that every man who came up to vote, who was

not on the original or extra assessment list, was either known to the officers or produced a voucher?

"*Answer.*—It was so, to the best of my knowledge.

"You know of no instance to the contrary?

"*Witness.*—No, sir, not that I recollect.

"If that is so, the last 211, who are not on the assessment list, were either known to the officers, or produced vouchers?

"Objected to by Mr. Hirst, but the witness answered that they did."

Consider that for a moment—we know that the last 211 were not known to the officers, because they have been all asked to point them out, and there is not a man among them capable of being pointed out. They, all of them, produced vouchers. Now, compare that with the first part of that man's testimony in which he saw "several" vouchers produced in the course of the day, and say whether the night's reflection and your inquiry have not changed his opinion. Turn next to McGarey at p. 87, and then turn to his testimony at 94, where he says, "no man that I recollect was sworn to vouch for any one." And there is another thing in reference to his testimony—he says that every paper was ready and finished when they sent for Mr. Enue on Wednesday evening. I beg leave to ask attention to the fact that Mr. Enue could have fixed beyond all question what these election officers were doing when he went there—it was a point in which our learned friends could have confirmed the officers if it had been advisable. Look at the testimony of Donnelly, who was Judge of this election. What he was to do if a question arose on a naturalization paper or a receipt for taxes, is more than I can determine;—he could neither read nor write. I crave attention particularly to one thing he said.

"*Question.*—Did you twist tickets in that way?

[The witness is shown some tickets.]

"*Answer.*—Yes, sir; at the time the papers were so damp, that if I had twisted them harder they would have torn; and then I counted them a

second time over to be sure of them. I twisted them so as not to tear them."

What dampened the papers in these boxes? When he said that, it fell with some astonishment upon my ear. What does that mean? I hope our learned friends will explain it. Sheriff Deal's cellar or a fresh printing press can dampen them, but what does he mean; *he* was twisting tickets that had been there all day—handled by the citizens, in the month of October;—I never did understand, nor do I yet, what that means, but that it means something no man can hesitate to believe. There was a feeble effort made at one time to prove that Salway, a brother-in-law of his, voted, (pages 103 and 108,) his name is not to be found on the list of voters if he did vote. The only name like it has for a Christian name "James," while the brother-in-law was Francis.

I refer, moreover, to McMullen and the four officers, to show that up to the last stage of this case, every man entertained the belief that this list of voters was made out cotemporaneously with the other; and not till Wurteim and Hayburn were examined was it known that one was made first, and the other copied afterwards. See what McMullen says at p. 118.

"*Question.*—If Hayburn was writing at this list, who was writing at the other?

"*Answer.*—Hayburn might have handed his list over to Wurteim to see whether they could correct the numbers.

"*Question.*—If this is Hayburn's handwriting, who was keeping the other window list?

"*Answer.*—Wurteim might have had it.

"*Question.*—If he hadn't it, who had?

"*Answer.*—I don't know. One or the other must have had it."

That conveyed the idea to this Court that these lists were going on cotemporaneously. Turn to what he says at another time.

"Every man that day, who was not upon the Assessor's list, was vouched for before he voted?

"*Answer.*—We either knew him to live in the ward, or he had to get a voucher. I was at the window and knew that.

"Give me the name of any gentleman who was a voucher for any voter between 7 and 10 o'clock at night?

"*Answer.*—I saw Fagan vouch for some; some time in the evening.

"*Question.*—Can you give the name of any person who vouched between 204 and 234?

"*Answer.*—I don't remember any.

"*Question.*—For whom did Fagan vouch?

"*Answer.*—I don't remember that; nor for how many. It was W. H. Fagan. He might have vouched for one or so. I don't remember more."

William H. Fagan was a witness in this after McMullen's testimony, and could have told whom he vouched for. I have called your attention to these officers successively, and now I come to Wurteim; at p. 133, for the first time, did it come out broadly, that this paper now before the Court actually was a copy of the other window list. It comes very near to my theory in this case, that the last 300 were copied from Hayburn's list after the polls were closed. That is true of this list; if Hayburn's was here, perhaps we should see with more accuracy how these copies were made, and see why this so accurately closes just at the bottom of the page. In Hayburn's testimony, p. 163, he boldly tells the Court that every man was vouched for who was not on the Assessor's list: Which of these are you to believe? I ask you to look back at the seven propositions I put a little while ago, as to the duty of these officers; they were on their oaths then, and are now—and now they have taken much away and added nothing to the faith which the law placed in their official return. They have, by the confession of these things mildly called *irregularities*, rendered confidence in them impossible. They have weakened, not strengthened, their position; for oaths confes-

sedly violated and sworn duties openly disregarded, badly, very badly, recommend them to your consideration.

The next point to be observed is the enormous lapse of time till the counting was finished. Tickets could have been printed. Damp tickets could have been cut and counted in that time. From ten o'clock to four in the morning, when they went up stairs, what did these five men do? This is a time when most men sleep, and it is a time when, if men have not something very much to interest them, human nature will give way. They were busy all that time—not a man confesses he winked an eye. What were they doing? Counting 449 votes for the Amendment—did that take six hours? Why, you can count votes, if you have them at your hand, as quickly as you can take them. That was not all they were about—they were busy with the list of voters—they were making them agree; they were copying from Hayburn's, the lost list, to Wurteim's, the produced list. They justified the rumors of the election day, that Moyamensing would astonish the community! They were busy, in the emphatic language of McFalls, "finishing" the election. Five men, with 449 tickets to count between them, and took, even with Donnelly's counting them, one by one, six mortal hours to do it! It cannot be. Turn to another thing in connection with the conduct of these men. Where are the papers which the law requires to be preserved—the papers in which you, and I, and every other man has a deep interest? It is in vain to tell me they went into that box. I do not know what theory my learned friends mean to suggest. The boxes were taken to Ald. Fletcher's—no suspicion rests on him; they were conveyed to the Sheriff, and came from him here. These papers are not in them. Where are they? Who has a motive to conceal them? Have the contestants—those who are desirous, whose only prayer,

from beginning to end, has been for a comparison of these papers? Have they any motive to take them? No! Who has a motive to conceal them? If my case is right, the men who would add three hundred names to the list of voters, would not scruple to destroy them to keep that addition secret. Three of these men do not pretend to have seen the papers go in. McFalls was asleep, and McGary thinks "whatever was necessary went in;" Donnelly thinks they did. McMullen, Hayburn, and Wurteim are the only three that undertake to speak positively to this Court. Who says that that box has been opened and papers stolen from it! McMullen took home with him the papers to be deposited in the Common Pleas, and he sealed them at home; he did not seal them at the same time as the others. I call upon your Honors to say, that when you trace the conduct of these officers, it is not going too far to say that to conceal their crime, the absence of these papers was essential for them. We can easily see what this case would come to. The Assessor's list, without a tick, without a name written on it—the list of voters, the last three hundred of which might have been very different paper from that of the County Commissioners. It takes a long time to copy three hundred names. But these papers are not here—and the officers are bound to have them here. Where is the seventh branch of their duty performed? Look back and see if when upon their oaths they discharged their duty faithfully; if they did not do it then, they cannot be respected when they come into Court to testify. I call attention to the position of these officers in another point of view. They have repeated here on oath only what they had before sworn to. They stand *in great present peril*, and that is to be considered as weighing heavily the credibility of witnesses. The stake is a high one that we are playing for. What man supports them in their testimony? No one is

produced to do it, and they are contradicted by 48 voters. How did these names get on the list, I repeat? There is no explanation, except that they came in at the window, and as they came in, were put in the boxes. These officers have the past to preserve, and a terrible future to protect, in their testimony. McFalls imprudently aided our search—he designated a man's residence, and we could find him—he designated some half a dozen, and they are here before the Court. The more he designated, the more we produced. What is left for them?

Thus stands our case upon this question of fraud, and if it falls upon that, it falls forever—the law for contesting elections is a cheat—the vote by ballot must be abandoned forever. Bad men can make constitutions and laws by fraud. Men will cease to have *faith* in the institutions under which they live. We had better turn to English doctrines, which teach that because voting by ballot was introduced in Rome A. U. C. 612, and the Agrarian law (that most slandered law) followed in 620, that that law was a consequence of the vote by ballot.

I was sorry to receive the rebuke from my learned friend, for saying that this case has excited an interest at home and abroad: it *is still true*, and I do maintain, that if it is to be found that these frauds will have no rebuke from the Pennsylvania Judiciary, the vote by ballot had better be abandoned, and all hopes for its introduction elsewhere are at an end. My case stands upon the question of fraud as thus presented.

I have two other duties to perform; I mean with reference to the fourth and twenty-third specifications. They refer to Moyamensing and the District of Penn. They refer to those points to be discussed before the Court, with reference to the men who swore they voted for Mr. Reed.

I have already occupied your time to an unseemly length.

Perhaps you are in some degree to blame for that, from the encouragement given to the counsel who opened the case to go minutely into the evidence. I have endeavored to discharge that duty to the Court by the careful collation of the facts that have been in one month laid before them. I have endeavored in the first place to show your Honors distinctly and clearly, the nature of the specifications. I have pointed out the alternative nature of the two referring to Second Ward, Moyamensing. I have poised my case upon the third specification, and I endeavored to maintain it by such reasoning as I could present to the Court; divided into four propositions—the time—the names of persons on the list of voters proved not to have voted—the political history of the spot to which the attention of the Court was directed, and last, to the total absence of that evidence which, I humbly submitted, it was the duty of the opposite party to produce. I ask you to view these things jointly in your judgment. I have then considered the evidence on the other side as divided into two classes; first, the general evidence presented; and second, the evidence derivable from the officers of the election, and I have submitted to the Court the views and explanations which I felt it my duty to give upon these points.

I now approach the consideration of the fourth and twenty-third specifications. The fourth refers to the fact that more ballots were deposited in the Second Ward, Moyamensing, for the gentleman claiming the office than were counted for him by the officers; the twenty-third is a like specification with reference to the Eastern precinct of the District of Penn. I propose, as the views I have to express in regard to them are the same, to consider them together; they fall within the same principle, and are to be governed by the same rules of

law; and in this respect you may be equally aided in the determination of the question. I have prepared, and hand to the Court a list of the names of the witnesses who have been proved to have voted for Mr. Reed, in Second Ward, Moyamensing, and also in the eastern precinct of the District of Penn; the principle that is to govern both is the same. The facts are first to be determined; and these facts are, that in Second Ward, Moyamensing, I have produced 150 men to this Court who have sworn they deposited their votes for Mr. Reed, and the official return returns but 94; the difference in Second Ward, Moyamensing, is therefore 56. In the eastern precinct of the District of Penn, I have produced 84 men who have proved they deposited their votes for Mr. Reed, the official return of that District allows but 26—the difference there is 58. I call your attention to the fact of my being able thus to produce these witnesses, in connection with the previous portion of my case; for it will show to you that there is in truth in this community no difficulty in procuring the attendance at a Court of Justice of the voters of any of our election districts, and it sheds some light upon the total absence of any of the last 300, on the list of voters in the Second Ward, Moyamensing. In passing from that, to what legitimately belongs to the consideration of the question, I feel I have a right to say that in these 234 men you have seen and recognized respectable citizens, frank, open, and candid in their statements, and that there is no reason to believe from what you have seen in their appearance, manner, and conduct, that there was a design to do more than communicate the truth to this Court. They have another mark to which I beg to call attention; the mass of them are on the Assessor's list; they are known citizens whose homes are designated to the officers of the election, and to our opponents.

But I understand that in reference to this part of my case there is to come, for it has been most portentously heralded from my learned brother opposed to me, a constitutional argument, the force of which I do not yet comprehend. I do not understand, by the constitutional provision of Pennsylvania, directing the vote by ballot, that it can be pretended that the citizen is deprived of the privilege of telling for whom he voted. This secresy which it has pleased those who framed our laws to establish, may be, perhaps, is wise. I understand our constitution and laws to have given to the citizen the privilege of secresy, but I do not understand that it is so unlike all other legal privileges as that it cannot be waived. The question presented to this Court is not the right of the citizen to tell his vote, but the policy of this Court to receive such evidence, and if I correctly understand the proposition that is presently to be contended for, it is that there exists some high powerful public policy which is to prevent this Court from hearing what the citizen is cheerfully ready to tell you. This case will rule all future controversies of this sort; you are to decide first that you never will receieve such evidence, or second, that you *will* receive it—scurutinize it carefully, and judge of its credibility. It is between one of these two positions that you are now called upon to decide. First; that you never will receive it. I shall maintain that such ruling is not required by any judicial decision yet known; and second, that it is not required by any public policy.

The case in Locust Ward, to be found in 4 Pennsylvania Law Journal, rules no such principle. It decides that inasmuch as the constitution has given a man the privilege to vote in secret, it does not become a Court of Justice, acting under that Constitution, to compel the secret to be divulged; this was also held in the legislature in Senator Bell's case. But these decisions do

not meet the case of a voluntary statement by the citizen. I wait with patience to hear of any judicial authority that forbids the reception of this evidence. Suffer me to consider whether public policy requires this Court to refuse it. I will admit, and fully admit, that such testimony is to be most carefully weighed and considered. It may be that in a close political contest such a principle might be turned to bad ends—it may be that wealth or influence or power might induce men to come before the Court and falsify in reference to their votes; but to exclude evidence on such a principle as this, is to exclude it on the ground that you doubt the integrity of the witness. But the presumption of law is that the witness will speak the truth, and you will never suffer any rule of public policy to be based upon the presumption that the citizen can testify an untruth Let me call your attention to it in another point of view. So far as my very limited experience goes, it seems to me that the easiest mode of committing a fraud at an election, is by abstracting and changing the tickets. If that be true, beware of laying down any general rule of public policy which shall deprive the citizen of the only mode of proving that to have been done. If this rule is to be maintained, it must extend to ones and to hundreds of thousands. Suppose one thousand citizens were called before this Court, who swear that they deposited their vote for a given individual for a given office, and the return showed not one solitary ballot—the public policy would equally require it then, and *the stealing of one thousand tickets by an election officer would be protected by this Court of Justice on the ground of public policy.* Look for a moment at the evidence in this very case. There was a time between the closing of the polls in Second Ward, Moyamensing, and the time the boxes were taken to Alderman Fletcher, when one man alone had

charge of these ballot-boxes. This rule, on the ground of public policy, is to put into his hands the power by simply abstracting the tickets that have been deposited there, to change, to alter, to make or unmake any officer or political principle he pleases. There *can be* no rule of public policy that can lead to consequences like these.

Having said as much as becomes me in the opening, in reference to the suggestion from my friend on the other side, I beg to call your attention to the evidence in relation to the Eastern precinct of the District of Penn. My evidence closed with 84 citizens sworn to have deposited their ballots for Mr. Reed, and that evidence, in consequence of the direction of the President Judge of this Court, stands confirmed. What would have been the effect of this rule of public policy, if you had excluded that evidence, and how strongly does the examination of the boxes show the wisdom of receiving it? It was sworn by five election officers in Penn District, as good men—that is to say very little for them—perhaps better men, than those five who had spoken from Second Ward, Moyamensing, that that ballot box would show twenty-six votes for Mr. Reed. The counting showed more than that number. What faith is to be placed in men's midnight memories of counting ballots? In accordance with the suggestion of the Court, the boxes were counted immediately after the Court adjourned, in the presence of counsel of both parties. Now, either these election officers were grossly mistaken, or some of them wilfully committed fraud, or that ballot box has been tampered with; and I do think it was one of the most remarkable portions of this case, to see the feeble effort that was made to show that the ballot box had been opened in the interval. The Sheriff had deposited these boxes in a vault, and the boxes became wet there, and they were

brought into the dry and heated atmosphere of this room; the box was damp, and there is a dampness seems to pervade both of these detected wards; the tickets were damp when Donnelly twisted them, and the boxes were damp when the Sheriff produced them before the Court; the wood warps a little, but luckily, to prevent all possibility of doubt on that subject, it warps in a *curve*, exhibits no violence, and if my learned friends will show that there exists, save one, American Mechanic and Inventor, a man who can take a piece of thin poplar wood and bend it to a curve, without breaking, I will yield to his theory. You cannot take out twenty-six ballots and put others in by system; there was wrong counting at first in the District of Penn. I will submit to your Honors a little practical calculation of how this thing was done. The Democratic vote for State Senate was 371; the Whig vote was 91. Well, sir, we all know that at the last election, if there was a subject in which men's minds were interested, it was the maintenance of the laws and good order in this community; and of all the officers, the public attention was directed to the Marshal of Police, who was personally to keep the peace, and arrest the offender, and the District Attorney, who was to give his influence and character to convict the criminal. It is not unreasonable, therefore, to suppose that the same fellow-citizens who felt an interest in the individual who was at Harrisburg to legislate for our interests, would entertain the like feeling for those who were to suppress riot and murder at home. In reference to the office of District Attorney, there was a third gentleman who rejoiced in being what is called an "independent candidate." The calculation made by the officer of this Court, shows that of the Whigs, Mr. Dickerson drew to his fold 15 votes, and of the Democrats he gained the affections of 17. Be so kind to take

from the 371 Democrats who voted for State Senate, the 17 erring ones, and you leave 354 as the number of Democrats—firm, resolute men—who voted for their candidate; if you deduct from the 91, the Whig vote for Senator, 15, you will have 76 true and steadfast men who voted for their candidate for District Attorney. Now, you have the true poll by that process; for District Attorney, 354 to 76. If there had been this peculiar difference of 50 apparent on the returns, it must have appeared on the inspection of the tickets. Now let me tell you how this thing was done—my theory of it. You will find Mr. Kneass counted by the clerk 377 votes—deduct the true poll, 354, from that, and there is a difference of 23; Mr. Reed's count by the clerk is 53; deduct that from 76, the true poll, and the difference is 23. If that had been an odd number, it would have been difficult to account for, but when it is an even number, it wants but the exercise of a little careful manipulation to substitute 23 tickets of one man for another. I submit this calculation to the Court. I fortify the fact that these officers are wrong by the resistless evidence of the boxes themselves, and I pass to the consideration of the last question I am about to discuss before the Court.

What action will this Court take, when every vital principle of the election law is violated by the officers entrusted to conduct the election? What is proved in reference to Second Ward, Moyamensing, and what is it your duty to do? I have called your attention to the fact that the great means afforded by law for the detection of fraud, were not only neglected, but not attempted to be performed. What is the condition of that ballot box of the Second Ward, Moyamensing? Why, a man as well could have stood outside of the window and pitched tickets in, and call them votes, as to suffer the taking of votes from men not authorized to

vote; the law is distinct and clear. You have an opportunity to put your name on the assessment list or extra assessment list, any time before ten days of the election; and if you do not do that, and you come to the polls, before your vote is received, you must produce a voucher, who will swear to your residence within the ward for ten days; and till that is done, no one can vote. It is conditioned precedent to the reception of the vote—without it, it is no vote recognized by law. As well might the tickets be handed in by the bushel basket, as to be received from every human thing that chooses to walk to the window and thrust his right hand in. I know what has fallen from the Bench on this subject. I know this Court has paused and hesitated, before you would interfere, with the strong arm of the law, to set aside an election on the ground of irregularity; but pray consider the nature of that irregularity. There may be an omission to keep a window list—there may be a carelessness in reference to the papers —but when it goes to the title of the voter to vote, then it becomes a question of right. Let me turn attention, for a single moment, to what I understand to have been the decisions of this Court on this subject; there are two to which I have access—the Locust ward case, in 4 Pennsylvania Law Journal, p. 341. What was the irregularity that induced this Court to set aside that election? That the officers, regardless of the law, had kept it open till past ten o'clock first, and second, that after ten, so great a number of votes were received as to affect the result. That was a pure matter of form—for every impulse of the Court would naturally have been to have said, although the voter came a little too late, if the voter was an honest one, be it so; yet, you held that, in that regard the law of the land should be rigidly complied with. How much more important is it that the man who comes to vote, who is to make laws and make constitutions,

should be known to the law, either by assessment or by sponsor? The other case decided by this Court was Boileau's case. I crave leave, as that is not as accessible as the other, to read a passage of your opinion, reported in the Public Ledger of the 19th of May, 1845, to show that you have always maintained the doctrine that if the irregularity is of a flagrant character, this Court will interfere. [Reads.] Now you have told us that if these irregularities are not such as are capable of easy understanding and detection, you will protect the citizen in regard to them. The argument used in this regard is, "Don't disfranchise the citizen—don't disfranchise him, because his election officer, as in this case, cannot read or write." Whom do you disfranchise? The majority. The minority are always willing to be disfranchised—of course, provided the majority are, too. The majority of the people of a given district have chosen to place men there unfit to do the duty, and I maintain you render a great service to the community, if you resolutely say you will not permit irregularities touching the vital character of an election to pass unnoticed: the consequence will be, that men capable of conducting it with regularity will be chosen. Of these 590 names on the list of voters, but not on the assessment list, no living man can tell that any one of them *was a voter, within the meaning of our laws.* To suffer this poll to stand, is to encourage such things—to set it aside, is to enforce the law of the land, and teach the community to obey it.

I have presented to you the views I felt occasion to express to this Court with reference to this case. I have placed before you, first, the arithmetic—second, the frauds, and third, the general duty of this Court to set aside this poll. I submit, I have maintained the proposition that of the voters of the County of Philadelphia, Mr. Reed had the majority. I have

avoided the slightest reference to the individuals who are the parties here. I owe it to myself to say that it has never been believed by any whom I directly or indirectly represent, that our highly respected brother, the respondent, knew, or thought, or dreamed of the commission of these frauds. I do not think that either of the gentlemen contestants before this Court would hold the office if he did not believe it to be the free gift of the people. The case is now with you, and you are responsible for it. You are to be either with us, or against us. You are either to sanction these things and confirm them by the weight of your judicial character, or you are to disarm and punish them. This is, so far as my knowledge and search extends, the first contested election tried before a judicial tribunal, and it is not too much to say that the *political morals* of your country are to a certain extent placed in your keeping. You are to educate the people upon these questions. See—I beg, see that you train them to honesty—see that you encourage them to believe that fraud neither in man or in party, or in nation, can further or attain any successful result. I have done my humble duty in this cause, animated by no other desire than to serve and do justice to a learned brother of my own profession—of that profession which, living or dying, I will proclaim to be, save one, the noblest occupation of man on earth. I have no other wish than that the case should be so decided by this Court, as to add honor and character to the bench—to strengthen the affections of the people to their form of government, and as far as its humble limit goes, to maintain and perpetuate it forever.